



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY &
MUNICIPAL EMPLOYEES, LOCAL 1801, DERRY
PUBLIC WORKS DEPARTMENT

Complainant

CASE NO. A-0413:14

v.

TOWN OF DERRY, BOARD OF SELECTMEN,
PAUL COLLETTE, CHAIRMAN

DECISION NO. 84-49

Respondent

APPEARANCES

Representing American Federation of State, County & Municipal Employees, Local
1801, Derry Public Works Department

James C. Anderson, Executive Director

Representing the Town of Derry, Board of Selectmen, Paul Collette, Chairman

Gary Wulf

Also in attendance

Bernard Duval
Charles Buzzell

Candy Frank
Rodney Bartlett

BACKGROUND

On January 11, 1984, AFSCME, Council 68 on behalf of AFSCME, Local 1801, Derry Public Works (Union) filed an improper practice charge with PELRB against the Town of Derry (Town) and the Derry Selectmen and Paul Collette, Chairman.

The union alleged that during negotiations one of the items of negotiation was travel mileage and that during the negotiations the union pointed out that the town was paying a certain mileage to a certain employee whereupon the town reduced said payment thereupon violating RSA 273-A:5 I (c) "to discriminate in the hiring or tenure, or the terms and conditions of employment... for the purpose of encouraging or discouraging membership in any employee organization" and RSA 273-A:5 I (e) "to refuse to negotiate in good faith..."

The town responded that it agreed they were in negotiations, having reached the mediation stage then, and that travel mileage was an item being negotiated. However, the town claimed that upon discovering a mileage payment which was contrary to town policy it then merely corrected the error, not contrary to RSA 273-A.

A hearing was held at PELRB office in Concord on April 26, 1984 with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

At hearing testimony established the following facts:

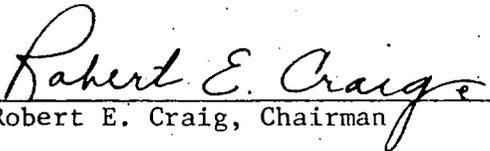
1. The town had been paying one employee, Mr. Duval (a carpenter) .26¢ per mile for using his own pick-up truck to haul whatever lumber materials he required.
2. No contract was in effect during this period.
3. No previous contract had contained a provision for mileage but current negotiations included union proposal for .40¢ per mile reimbursement.
4. The town admitted they had been paying Mr. Duval .26¢ per mile but claimed it was in error.
5. Mr. Duval had complained (in 1982) of the .20¢ per mile reimbursement and had been paid .26¢ per mile as agreed to by Mr. Young, the then Town Manager.
6. Subsequent to the agreement between Mr. Duval and Mr. Young the town changed its type of government and now had an Administrative Assistant to the Board of Selectmen, and no longer a Town Manager.
7. Mr. Young told Mr. Duval that the Public Works Director, Mr. Bartlett would continue to "make right" the mileage payments as compensation for use of Mr. Duval's truck.
8. Mr. Duval and the town agreed that the use of the truck was strictly voluntary.
9. Mr. Duval did have a reduction in mileage payments to .20¢ per mile as of November 1, 1983. Although a memo dated November 18, 1983 to Mr. Duval from Public Works Director Bartlett indicates that the mileage payment changed (and other changes) would be effective November 21, 1983.
10. Mr. Bartlett testified that the standard mileage reimbursement was established under Mr. Young, by memo, in 1981 at .20¢ per mile and that he was not included in any adjustment to that rate for Mr. Duval.
11. Mr. Duval's reimbursement at .26¢ per mile was rescinded by the Board of Selectmen in November of 1983 and Mr. Bartlett acted accordingly.

DECISION AND ORDER

The PELRB finds that in rescinding an agreement, made by a Town Officer, during the course of negotiations on this very subject, the town did interfere with negotiations in a manner constituting a refusal to negotiate in good faith and, therefore, did commit an unfair labor practice violating RSA 273-A:5 I (e).

The PELRB orders the town to pay Mr. Duval the difference between the .20¢ per mile rate paid and the previously agreed to .26¢ per mile rate for the period up to but not beyond November 21, 1983, the effective date of Mr. Bartlett's memo.

The PELRB declines to make further findings in this case.


Robert E. Craig, Chairman

Signed this 31st day of May, 1984.

By unanimous vote. Chairman Craig presiding. Members Seymour Osman and Russell Verney present and voting. Also present, Evelyn C. LeBrun, Executive Director.